

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

2005 FEB 22 P 5: 21

NEIGHBORHOOD  
ASSOCIATION OF THE BACK  
BAY, INC. et al.

Plaintiffs

v.

FEDERAL TRANSIT  
ADMINISTRATION et al.

Defendants

CIVIL ACTION  
NO. 04cv11550-RCL/EFCE

PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT

The plaintiffs move for summary judgment.

As grounds for this motion, the plaintiffs state the following.

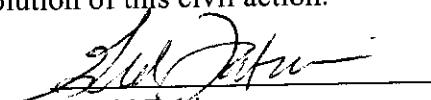
1. Defendant Federal Transit Administration ("FTA") has issued a "Finding of No Significant Impact" with regard to defendant Massachusetts Bay Transportation Authority's ("MBTA") proposal to construct an elevator entrance and a stairway within the Back Bay Historic District, on a main street sidewalk adjoining the historic Arlington Street Church.
2. The MBTA's project is to be constructed not only in the Back Bay Historic District, but also on land which is part of the historic Arlington Street Church.
2. The MBTA's project is federally funded.

3. The FTA's finding of "no adverse effect" of the MBTA's project on Back Bay Historic District or on the Arlington Street Church is not only arbitrary and capricious, but also contradicted by the FTA's administrative record (which the FTA has already filed) and its Finding of No Significant Impact.
4. The adverse effect of constructing the elevator and stairway entrances on a sidewalk adjacent to Arlington Street Church could be eliminated by utilizing a location that the administrative record shows would be the preferable location for the elevator entrance, if not for the opposition of a single landowner, whose properties have not been shown to have any historic significance.
5. Because constructing the MBTA's elevator and sidewalk entrances adjacent to the historic Arlington Street Church adversely affects the historic character of that building and of the Back Bay Historic District, and because feasible and prudent alternative locations for the elevator entrance exist which do not adversely affect historic buildings or districts, the FTA's Finding of No Significant Impact is invalid and federal funding of the MBTA's project is prohibited by 36 U.S.C. §470f and 49 U.S.C. §303.

6. Because the Massachusetts Historic Commission has not made a final decision of a lack of adverse effect of the MBTA's project, Mass. G.L. c. 9, §27C prohibits it from proceeding.
7. Even if the Mass. Historic Commission has made a final decision that the MBTA's project has no adverse effect on the Back Bay Historic District or on the Arlington Street Church, both in the state register of historic places, such a decision must be arbitrary and capricious, for the same reasons the FTA decision was arbitrary and capricious.

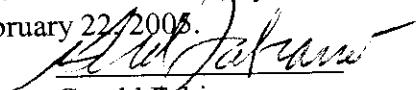
Certificate of Conferring  
LR 7.1(a)(2)

In agreeing on a briefing schedule for motions for summary judgment, which was proposed to the Court in a joint motion, counsel for all parties have agreed that a motion for summary judgment is necessary for the resolution of this civil action.

  
Gerald Fabiano


Certificate of Service

I hereby certify that a true copy of the above document was served upon all counsel of record, by mail, on, February 22, 2005.

  
Gerald Fabiano

Plaintiffs Neighborhood Association  
of the Back Bay, Inc., Dorothy  
Bowmer, Marianne Castellani, Ann  
D. Gleason and Frederick C. Gleason

By their attorney

  
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